

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

CRIMINAL NO. 16-cr-20218

Plaintiff,

HON. VICTORIA A. ROBERTS

v.

D-1 CLARA FLOWERS,

Defendant.

GOVERNMENT’S SENTENCING MEMORANDUM

The United States of America, by and through its attorneys, Barbara L. McQuade, United States Attorney, and J. Michael Buckley and Frances Lee Carlson, Assistant United States Attorneys, submits that for the reasons provided below, a sentence of 46 to 57 months’ imprisonment, which takes into account the defendant’s cooperation, is sufficient but not greater than necessary to achieve the purposes set forth in 18 U.S.C. § 3553(a)(2).

I. FACTUAL AND PROCEDURAL HISTORY

A. Plea

On May 3, 2016, the defendant pled guilty pursuant to a plea agreement to one count of conspiracy to commit federal program bribery, in violation of 18 U.S.C. §§ 371 and 666(a)(1)(B) and one count of federal income tax evasion, in

violation of 26 U.S.C. § 7201. Flowers' guilty plea arises from her participation in a conspiracy to accept illegal kickback payments from school supplies vendor and co-conspirator, Norman Shy. The plea agreement recommended the guideline range to be 57 to 71 months, based on a total offense level 25 and a criminal history category I.

According to the cooperation provisions of the plea agreement, on August 22, 2016, the government filed a motion for downward departure recommending a sentence within the range of 46 to 57 months.

B. Facts

Defendant Clara Flowers was employed by Detroit Public Schools ("DPS") as the director of the Office of Specialized Student Services from 2007 through 2012, and then as assistant superintendent of the Office of Specialized Student Services from 2012 through 2015. DPS maintained a list of pre-approved vendors that were authorized to do business with DPS. As part of her duties, Flowers had the discretion to select vendors from the pre-approved DPS vendor list to procure services and supplies for various DPS schools. Flowers was responsible for certifying, or causing to be certified, that all goods and services were received by DPS, which in turn, would cause DPS to issue payment to the vendor.

Norman Shy, doing business as Allstate Sales, Ronan Enterprises, and R.S. Associates, was a pre-approved DPS vendor of school supplies. Sometime prior to

February 2009, Flowers selected Shy as a vendor for school supplies. At some point, Flowers agreed with Shy to submit purchase orders which included goods that she knew were not going to be delivered to DPS schools and also to knowingly certify fraudulent invoices which included undelivered goods. Flowers' actions caused DPS to issue payment to Shy for undelivered goods. In exchange, Flowers would receive a "credit" with Shy based on a percentage of the fraudulently-obtained payment Shy received from DPS for undelivered goods. Flowers regularly withdrew from her "credit" with Shy by requesting and accepting illegal payments of various types from Shy to use as she wished. In order to make his kickback payments appear legitimate, Shy requested that Flowers provide him with fraudulent invoices from Flowers' business, "Always Together Travel," which she willingly did.

Between February 2009 and January 2015, Flowers corruptly accepted kickbacks on numerous occasions. The kickbacks came in many forms. At times, Flowers requested that Shy give her gift cards increments of \$25 to \$500. Records obtained reveal that Flowers used these gift cards to purchase nail services, food, gas, women's clothing, and jewelry. Flowers received approximately \$249,611 of the total amount of kickbacks in the form of checks from Allstate Sales, payable to Always Together Travel. Flowers often provided Shy with fraudulent invoices from Always Together Travel, itemizing items relating to out-of-state leadership

conferences and related travel and hotel costs. Finally, Flowers fraudulently received almost \$16,000 from Shy in the form of checks from Allstate Sales, payable to various home improvement companies for painting, gutter, and tile work, as well as a new roof, for Flowers' personal home. The total amount of kickbacks Flowers accepted is approximately \$324,785.

During taxable year 2009, Flowers also failed to declare the money paid from Allstate Sales to Always Together Travel. The tax loss stipulated to in the plea agreement is \$27,488.

II. SENTENCING GUIDELINE CALCULATIONS

As reflected in the plea agreement, the parties anticipated a guideline range of 57 to 71 months based on a total offense level of 25. The probation department calculated a guideline range of 87 to 108 months based on a total offense level of 29. The difference in calculation is due to the fact that the probation department applied a four-level increase pursuant to USSG § 2C1.1(b)(3), reasoning that the offense involved a public official in a high-level decision-making position.

As the Court is aware, on August 22, 2016, the government filed a motion for downward departure recommending a sentence between 46 to 57 months based on Flowers' cooperation. As a result, if the Court grants the motion, the inconsistency in calculations would likely be moot.

III. SECTION 3553(a) SENTENCING FACTORS

In determining the appropriate sentence, the Court should not simply rely on the Guideline calculations, but should consider all of the factors in the Sentencing Reform Act and, in particular, those set forth in 18 U.S.C. § 3553(a). These factors include (i) the nature and circumstances of the offense, and the history and characteristics of the defendant; (ii) the need for the sentence imposed to reflect the seriousness of the offense, promote respect for the law, and provide just punishment for the offense, and (iii) the need for the sentence imposed to afford adequate deterrence to criminal conduct.

In this case, absent the government's motion for downward departure, a guideline sentence is warranted. However, because the defendant did cooperate with the government, a sentence below the guideline range is appropriate.

A. Nature and Circumstances of the Offense

This fraud on DPS and the children of Detroit was a very serious offense. The struggles of DPS have been well-documented in the media: deplorable building conditions; teacher shortages; severe lack of school supplies and equipment; overcrowded classrooms; lack of funding. The list is long. Flowers, as the director and then assistant superintendent of the Office of Specialized Student Services, was entrusted with the responsibility of ensuring that the students with special needs at DPS schools were receiving every educational tool and benefit

available despite the woefully inadequate resources. Flowers abused the trust placed in her, and made decisions to do business with vendor Norman Shy, motivated by what she *personally* stood to gain, instead of what was best for DPS' special needs students.

Flowers often used the kickback payments she received in order to benefit herself. Contrary to the claim in her sentencing memorandum that she often provided the gift cards to her staff (R. 40: Def. Sent. Memo at 15), Flowers admitted during an August 19, 2015 interview that she was the one who used the gift cards. Also in her sentencing memo, Flowers claims that the money Shy paid to her travel agency was used to pay for conferences trips for her staff. (*Id.*).

Indeed, many of the Always Together Travel invoices she provided to Shy listed costs for leadership conferences, airline travel, ground transportation, and hotel costs. From February 2009 through May 2014, Shy paid almost \$300,000 to Always Together Travel. The government submits that all of these invoices were fraudulent. In fact, invoices dated 2010, 2011 and 2012 list air travel on "Northwest Airlines" – an airline that did not even exist since the 2008 merger with Delta. Also, during a September 25, 2015 interview with the FBI, Flowers admitted that it was her idea for Shy to pay her kickbacks via check in an effort to make the transactions appear legitimate. She added that in an effort to legitimize

the payments, Shy asked her to provide him with an Always Together Travel invoice in the same amount as the kickback check. Flowers confessed that all of the checks Shy wrote to Always Together Travel were fraudulent and that she did not report any of these payments to the IRS.

Flowers' claim that "some of the fraudulently obtained money actually got funneled back into DPS programs because the funds were used to pay for training/conferences and gift cards to benefit the DPS staff, students, and parents" (Def. Sent. Memo at 16) is wholly unsupported and contradicted by her own statements. To the extent that the Court considers Flowers' characterization of her motivation as altruistic, the government submits that this consideration should be irrelevant. Although the Sixth Circuit has not confronted this issue, other federal circuits have had the opportunity to address similar arguments. Federal circuit courts have resoundingly declined to consider personal profit motives—or lack thereof—when imposing sentences.

In *United States v. Seacott*, a district court's departure from the recommended guidelines because the defendant's motive was not for "self-gain" was reversed. 15 F.3d 1380, 1386 (7th Cir. 1994). Although the district court reasoned that the guidelines did not adequately take into consideration why a defendant would misapply funds, the Seventh Circuit held that an alleged positive

motive was “legally insufficient” to warrant a downward departure. *Id.* at 1387.

The Court explained that when the drafters of the Guidelines were concerned with adjustment based on profit motive they were careful to specifically direct courts to consider the defendant’s purpose. *Id.*¹ Most importantly, the Court in *Seacott* recognized:

It makes little difference to the[] victims if [defendants] illegally transfer funds to themselves or third parties, or if they pile up the money in the parking lot and burn it. The same amount of money has been taken from the victim no matter what the fate of the funds.

Id.

Other circuits have reached similar conclusions, finding that altruistic motive or lack of pecuniary gain to the defendant is irrelevant in sentencing. In *United States v. Corry*, the defendant argued that she did not experience personal gain from the bank fraud she committed since the money was being used to keep a family business afloat. 206 F.3d 748, 749 (7th Cir. 2000). Again, the Court recognized how irrelevant a charitable motive is: “[T]o the victim, the criminal’s motives are irrelevant. If someone steals your wallet and gives the money in it to

¹ For example, citing the offense “Manufacturing Distributing, Advertising, or Possessing an Eavesdropping Device” which directs the court to consider “[i]f the offense was committed for *pecuniary gain*, increase by 3 levels.” U.S.S.G. § 2H3.2(b)(1) (emphasis added).

the Humane Society, rather than blowing it in Las Vegas, that's little comfort as you gaze at your empty pocket." *Id.* at 751. In the Third Circuit, the Court recognized that a defendant is not punished based on who the criminal activity benefits, instead "the Court must focus on the extent of the harm inflicted by the defendant on his victims." *United States v. Kopp*, 951 F.2d 521, 535-36 (3d Cir. 1991). Similarly, the Eighth Circuit held that a failure to personally recoup proceeds of a fraudulent scheme does not "provide a basis for a more lenient sentence." *United States v. Felder*, 225 F. App'x 423, 424 (8th Cir. 2007).

Accordingly, the alleged motive for a crime and who receives the proceeds of a fraudulent scheme is irrelevant. Although a sentencing court can consider any factor when considering a downward departure or variance, the federal circuits have made clear that a defendant's motive in a crime should not be grounds for leniency. Instead, courts should focus on the victims of the crime, and not any possible benefactors.

Even if Flowers was accepting fraudulent kickbacks and using the illegal proceeds to help her school, her alleged charity was only made possible by fraud committed against taxpayers and the Detroit Public School System. Flowers' attempt to downplay the seriousness of her corrupt acts by claiming she accepted and spent kickbacks on her students ignores the fact that her so-called charitable

acts were being directly funded by the crime for which she now stands convicted. This Court should reject Flowers's claimed motive for accepting fraudulent kickbacks when considering whether to depart or vary from the Guideline range, and in doing so recognize that charity involves giving away one's *own* money, not money that belongs to others. To find otherwise would sanction the notion that corruptly accepting bribes and kickbacks to spend proceeds as one prefers is not a serious offense.

B. History and Characteristics of Defendant Flowers

Flowers has no criminal history. The PSR provides a detailed account of Flowers' personal background.

C. Seriousness of the Offense, Promoting Respect for the Law, Providing Just Punishment, and Affording Adequate Deterrence

Flowers' corrupt acceptance of kickbacks was not a crime resulting from a single decision or a momentary impulse. She accepted kickbacks numerous times over several years, totaling a staggering \$324,785. Flowers' conduct was not spontaneous, but, instead, involved careful coordination and planning, and repeated acts of deceit over a number of years.

In prosecutions such as this, the sentence imposed is important to promote respect for the law. Congress enacted 18 U.S.C. § 666 to "protect the integrity of the vast sums of money distributed through Federal programs from theft, fraud,

and undue influence by bribery.” S. Rep. No. 98-225, p. 370 (1983). The sentence imposed should reflect this purpose. Flowers was a public official, and was entrusted to serve the DPS honestly, with the best interests of DPS’ special needs students in mind. The spectacle of an assistant superintendent corruptly using her position for her own financial benefit or to manipulate the system does untold damage to the faith of our citizens in the education being provided to their children. Undoubtedly, many members of the community are wondering how pervasive this type of corruption is in our educational system.

Given the difficulties of uncovering and prosecuting this type of corruption, the deterrent impact of a prison sentence is also important. The Eleventh Circuit emphasized the important role that prison sentences have in deterring economic-based crimes in *United States v. Martin* when it recognized that “[b]ecause economic and fraud-based crimes are more rational, cool, and calculated than sudden crimes of passion or opportunity, these crimes are prime candidates for general deterrence.” 455 F.3d 1227, 1240 (11th Cir. 2006)(internal citations omitted). Especially in a public corruption case, it is important to send a message that this type of conduct will not be tolerated, and that the penalties for committing crimes such as these are severe.

CONCLUSION

For all of the above reasons, a sentence of imprisonment within the range of 46 to 57 months, is necessary. Such a sentence would serve to adequately punish the defendant for her actions, while taking into account the substantial assistance she provided to the government. In addition, this sentence would promote respect for the law and serve as deterrence for others.

The government further requests that the Court order full restitution, as agreed to by the parties in the plea agreement, in the amount of \$324,785 to Detroit Public Schools and \$27,488 to the Internal Revenue Service.

Respectfully submitted,

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Dated: August 23, 2016

CERTIFICATE OF SERVICE

I hereby certify that on August 23, 2016, I electronically filed the foregoing document with the Clerk of the Court using the ECF system, which will send notification of such filing to the following:

Frank Eaman
Jennifer Qonja
Attorneys for Defendant, Clara Flowers

s/Frances Lee Carlson
FRANCES LEE CARLSON
Assistant United States Attorney

Dated: August 23, 2016